IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE DR JUSTICE G.YETHIRAJULU**

**WRIT PETITION NO: 13720 of 1994**

**Between:**

1 N. Issac S/o M. Sundaraiah
Rayalaseema Thermal Power Project, V.V. Nagar,
Cuddapah-516312
2 M. Sreenivasulu Reddy S/o M. Rami Reddy
Rayalaseema Thermal Power Project, V.V. Nagar,
Cuddapah-516312

**... PETITIONERS**

AND

1 A.P.S.E.B. rep. by Member-Secretary
Vidyut Soudha, Somajiguda,
Hyderabad
2 The Chief Engineer/Electrical Rayalaseema Thermal Power Project
V.V. Nagar, Cuddapah

**...RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed along with the writ petition, the High Court will be pleased to issue a writ of Mandamus or any other appropriate Writ or direction declaring the Memo No.DS(PS)/DM-VII/77/XA2/92 dt: 9-10-1992 issued by the 1st respondent as illegal, arbitrary and voilative of Article 16 of the Constitution of India.

**Counsel for the Petitioner: Mr.O.MANOHER REDDY**

**Counsel for the Respondents: Smt.K.SESHARAJYAM (SC FOR AP GENCO)**

**The Court at the admission stage made the following:**

**Oral Order:**

1. The petitioners joined in the respondents—Electricity Board as Lower Division Clerks (L.D.Cs) on 4-3-1966 and 12-6-1973 respectively. They were promoted as Upper Division Clerks (U.D.Cs) w.e.f. 30-5-1990 and 11-3-1993 respectively on permanent absorption basis. The next promotional post is the post of "Accountant". As per the A.P.State Electricity Board Service Regulations, the following qualifications are required for promotion to the post of "Accountant":

By Promotion:

Must have at least five years regular service as UDC or UD Stenographer in the Accounts Service. Must have qualified in the following examinations:

i. Accounts Test for Sub-ordinate Officers Part-I.

ii. Departmental Test for Accountants in the Electricity Board.

iii. Government Technical Examination in Accountancy by Higher Grade-I.

2. The petitioners contend that in view of the Board Regulations read with the provisions contained in Annexure-III, U.D. Clerks are eligible for promotion as Accountants if they put in at least 5 years of service as U.D. Clerks. But, in view of shortage of candidates who have put in minimum service of 5 years, the respondents directed relaxation of the relevant provisions of the above said regulation, which is against the regulations. The petitioners further contend that the respondents issued a Memo on 9-10-1992 granting relaxation of the minimum period of service required for promotion to the post of Accountant and also issued B.P.Ms.No.236 dated 13-9-1993 granting exemption for the employees who have completed 50 years of age and not passed the prescribed tests under the Regulations to become eligible for promotion to the next higher post of Junior Accounts Officers. The petitioners mentioned in the affidavit that though there were few vacancies of Junior Accountants in the second respondent Project,

there are no candidates who have completed five years of service as U.D. Clerks. Some juniors to the petitioners who have passed the departmental tests have requested for promotion as Junior Accounts Officers. The petitioners also made representations to consider the case of the seniors also for promotion for higher posts. Since the second respondent is contemplating to give promotions to the employees, who are juniors to the petitioners, by invoking the relaxation granted in the Board Memo dated 9-10-1992, the petitioners have approached this Court contending that the action of the respondents in ignoring their cases for promotion is not legal and the same is arbitrary and violative of Articles 14 and 16 of the Constitution of India. Therefore, the petitioners approached this Court seeking to issue a writ of mandamus declaring that the Memo dated 9-10-1992 issued by the first respondent is illegal, arbitrary and violative of Article 16 of the Constitution of India, that the relaxation of minimum service of five years for promotion through the Memo dated 9-10-1992 is not legally valid and to further direct the respondents to consider the petitioners' case for promotion to the posts of Accountant.

3. The respondents filed a counter stating as follows:

4. The Memo dated 9-10-1992 was issued in pursuance of the understanding with a recognized workers union of the first respondent. Since they arrived at an understanding under the provisions of the Industrial Disputes Act, it is binding on the employees and the Board. The Memo was issued in pursuance of an agreement dated 8-10-1992 which was signed by the management as well as the recognized employees of the Union. As per clause 2 of the said agreement, the approved probationers are to be considered for promotion from U.D. Clerk to Accountant on one time basis relaxing the minimum service. In pursuance of the said understanding the candidates who passed the departmental tests and who completed three (03) years of service were considered for promotion. The petitioners do not possess the requisite qualifications, therefore, they cannot contend that the relaxation of the length of service required for promotion from U.D. Clerk to the post of Accountant in case

of persons who possess the requisite qualifications as arbitrary and illegal. The writ petition is liable to be dismissed.

5. The petitioners admittedly did not pass the departmental tests to get the eligibility for promotion. Since there were vacancies to the post of Accountant, the respondents in pursuance of the agreement dated 8-10-1992 with the workers union issued the Memo dated 9-10-1992 relaxing the minimum period of service as U.D. Clerk in respect of those who passed the departmental tests. The respondents also issued another order vide B.P.Ms.No.236 dated 13-9-1993 granting exemption for those employees who have crossed 50 years of age and did not pass the prescribed departmental tests to become eligible for promotion to the next higher post. The said order was not challenged by any employees and it continues to be in force. Had the petitioners got themselves qualified by passing the prescribed departmental tests had if their cases are ignored, the position would have been different. The petitioners who did not qualify themselves to get eligibility for promotion cannot agitate that the respondents cannot grant a general exemption in respect of the minimum period of service. The order passed in the Memo dated 9-10-1992 is not an order passed in favour of an individual or a section of people. The order was passed in consonance with the agreement entered into between the Board and the recognized union of the workers union relaxing the service in the feeder category to the next higher post as a one-time measure. The respondents have not committed any error by passing the said order.

6. The learned counsel for the petitioners contended that granting general relaxation of qualifications applicable for promotions to the posts of Accountants is not valid. In support of his contentions, he relied on a Division Bench judgment of this Court in **Lakshman v. A.P.State Electricity Board** wherein the Division Bench held as follows:

> As a general rule promotions of persons serving under the Board are governed by the Regulations. However, in exceptional cases exemption can be granted by the Board. The grant of such exemption or relaxation under Regulation 41 should be in furtherance of justice and equity. It does not empower the Board to give general

exemption, from compliance with the Regulation, regardless of justice and equity, to enable unqualified persons eligible for promotion. Such general exemption is bound to impair the efficiency in the functioning of the Board itself.

7. Though there is no dispute with regard to the principle laid down in **Lakshman** (1 supra), the above judgment was delivered in a case where B.P.Ms.No.664 dated 5-8-1981 was issued by the respondent Board directing that the L.D. Clerks, Typists-Steno-typists and U.D. Clersk, who had good record of service for 15 years in the same post, should be exempted from passing the tests prescribed in the A.P. State Electricity Board Service Regulations Part-III as a precondition for promotion to the next higher posts of U.D. Clerk and Accountant-Superintendent respectively. The Division Bench in the above circumstances held that there is no rational basis for granting such a general exemption to those who have put in 15 years of service and have good record of service of qualifying themselves for promotion. The Bench further held that by the said exemption, the power conferred by Regulation 41 has been invoked to eliminate all eligible persons and de-enable ineligible persons for promotion. It is a case where a preferential treatment is given to the unmerited, which is a clear breach of Article 14 of the Constitution.

8. The Division Bench judgment is not coming in the way of this case, in view of the different set of facts and circumstances. In the case on hand, the respondents at the instance of the workers union decided to grant relaxation of the minimum period of service as U.D. Clerks keeping in view the number of vacancies of Accountants lying vacant. It can be treated as an exceptional case and can also be said that the grant of such relaxation is in furtherance of equity and justice. It is not a case where the unqualified persons are promoted. The persons who are qualified were only considered, but the minimum period of service required to be completed was relaxed with a view to see that the efficient functioning of the Board is not impaired.

9. When there were number of vacancies of Accountants, which

cannot be filled within the near future, on account of the minimum period of service required to be completed, the respondents Board thought it fit to grant the relaxation in respect of the persons who passed all the tests to prevent hampering of work. In the light of the above circumstances, it cannot be said that the Memo dated 9-10-1992 is illegal or arbitrary. I therefore hold that there are no grounds to declare that the Memo dated 9-10-1992 is illegal, arbitrary and violative of Article 16 of the Constitution of India and I do not find any merits in the writ petition.

10. Regarding the prayer of the petitioners to direct the respondents to consider their cases for promotion is concerned, since they did not pass the departmental tests, there shall not be any direction to the respondents to consider the cases of unqualified persons for promotion. Therefore, the request of the petitioners to issue a direction to the respondents to consider their cases for promotion cannot be acceded to. The writ petition is accordingly dismissed.

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**(Dr.G. Yethirajulu, J)**

07th September 2004

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 A.P.S.E.B. rep. by Member-Secretary
Vidyut Soudha, Somajiguda,
Hyderabad
2 The Chief Engineer/Electrical Rayalaseema Thermal Power Project,
V.V. Nagar, Cuddapah

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